

Patent  
Attorney's Docket No. 032751-049

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

OCT 31 2002

TECH CENTER 1600/2900

In re Patent Application of )  
Olivier MEYER ) Group Art Unit: 1635  
Application No.: 09/880,038 ) Examiner: Jon E. Angell  
Filed: June 14, 2001 ) Confirmation No.: 7218  
For: COMBINATION PRODUCT )  
INTENDED FOR CARRYING OUT A )  
CYTOTOXIC TREATMENT, IN )  
PARTICULAR AN ANTITUMOR )  
TREATMENT, IN A MAMMAL )

**REPLY TO RESTRICTION REQUIREMENT TRANSMITTAL LETTER**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Enclosed is a Reply to Restriction Requirement for the above-identified patent application.

- ☐ A Petition for Extension of Time is also enclosed.
- ☐ A Terminal Disclaimer and a check for ☐ \$55.00 (2814) ☐ \$110.00 (1814) to cover the requisite Government fee are also enclosed.
- ☐ Also enclosed is \_\_\_\_\_.
- ☐ Small entity status is hereby claimed.
- ☐ Applicant(s) request continued examination under 37 C.F.R. § 1.114 and enclose the ☐ \$370.00 (2801) ☐ \$740.00 (1801) fee due under 37 C.F.R. § 1.17(e).
- ☐ Applicant(s) previously submitted \_\_\_, on \_\_\_, for which continued examination is requested.
- ☐ Applicant(s) request suspension of action by the Office until at least \_\_, which does not exceed three months from the filing of this RCE, in accordance with 37 C.F.R. § 1.103(c). The required fee under 37 C.F.R. § 1.17(i) is enclosed.
- ☐ A Request for Entry and Consideration of Submission under 37 C.F.R. § 1.129(a) (146/246) is also enclosed.

☒ No additional claim fee is required.

☐ An additional claim fee is required, and is calculated as shown below:

AMENDED CLAIMS					
	NO. OF CLAIMS	HIGHEST NO. OF CLAIMS PREVIOUSLY PAID FOR	EXTRA CLAIMS	RATE	ADDT'L FEE
Total Claims		MINUS =		× \$18.00 (1202) =	
Independent Claims		MINUS =		× \$84.00 (1201) =	
If Amendment adds multiple dependent claims, add \$280.00 (1203)					
Total Amendment Fee					
If small entity status is claimed, subtract 50% of Total Amendment Fee					
TOTAL ADDITIONAL FEE DUE FOR THIS AMENDMENT					

☐ A claim fee in the amount of \$\_\_\_\_\_ is enclosed.

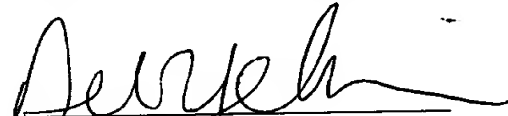
☐ Charge \$\_\_\_\_\_ to Deposit Account No. 02-4800.

The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

Respectfully submitted,

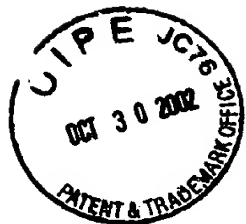
BURNS, DOANE, SWECKER & MATHIS, L.L.P.

By:

  
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Date: October 30, 2002



#8/K.T.  
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ELECTION  
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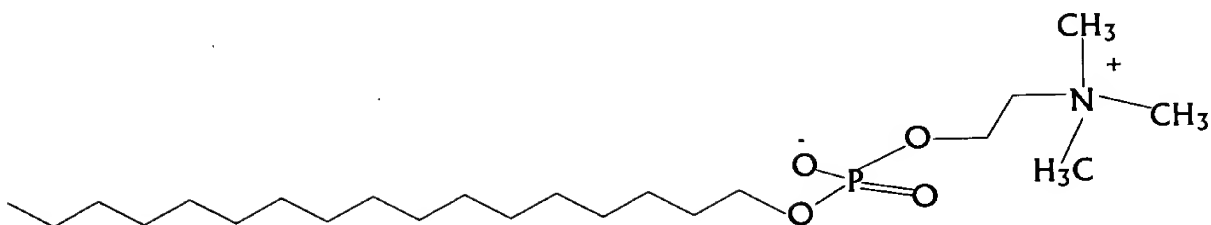
Sir:

This Reply to Restriction Requirement is in complete response to the Official Action (Restriction Requirement) mailed on September 30, 2002 (Paper No. 7). This Reply to Restriction Requirement is timely filed by the October 30, 2002 due date.

Applicant hereby elects with traverse the claims of Group I (Claim 1-21), which are drawn to a combination product.

Regarding the election of a single disclosed species of compound (A), Applicant hereby elects with traverse Hexadecylphosphocholine (HPC) which is a compound of formula (A) wherein  $n=1$ ,  $m=2$ ,  $R_2$ ,  $R_3$ ,  $R_4$  are methyl and  $R_1$  is a C16 alkyl chain.

As requested by the Examiner, a drawing of this structure is presented below:



Regarding the election of a single polypeptide species, Applicant hereby elects with  
traverse IL2.

Under M.P.E.P. § 803, a restriction is proper if the subject matter can be restricted into one of two or more claimed inventions, and these inventions are either independent (M.P.E.P. § 806.04) or distinct (M.P.E.P. § 806.05). However, the second element for a restriction requirement to be proper is that if the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent and distinct inventions. Furthermore, the Office has not set forth an explanation of how a search of the claimed invention would be burdensome. Accordingly, Applicant asserts that a proper restriction under M.P.E.P. § 803 has not been set forth with regard to the originally presented claims, the elections herein are provisional. Further, Applicant submits that both groups of claims, as well as all species, relate to the same concept, in that they are all directed to or part of a combination product useful for treating proliferative diseases. Applicant respectfully requests that the restriction be withdrawn or, at the very least, reconsidered.